

FAX COVER SHEET

Date: 5-15-06 Log No. _____Time: _____ Number of Pages: 12
(Including cover sheet)TO: Nick Miller
ISWRFAX#: (208) 287-6700FROM: Nancy McDonaldFAX #: (208) 527-3413

SPECIAL

INSTRUCTIONS: COPY TO:

- ☐ Confidential _____
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☐ Please Reply _____
☒ For your information _____

MESSAGE: _____

Trip Report Antelope &
2004 & 2005 not
attached -

If not received correctly, please call: _____

Nancy 527-3413

Darrell E. or Nancy McDonald
P.O. Box 102
Arco, Idaho 83213-0102
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Mr. Nick Miller
Water Distribution
Idaho Dept. of Water Resources
P.O. Box 83720
Boise, ID 83720-0098

Re: Concerns Water District 34

Dear Mr. Miller:

Attached are several documents that may help you understand our concerns and skepticism concerning accurate water distribution for District 34.

1. **"IDWR Actions Related to Water District 34 - 2003 Irrigation Season"** with minutes taken on October 3, 2003 in IDWR Conference Room A&B with the Director:

On page 3, "He directed their attention to the handout----. The long-term watermaster that has now retired, was misleading IDWR as evidenced in recent steps taken in number 6 of that handout."

This Watermaster served Water District 34 for about 20 years. The Patrons of District 34 trusted him, and relied on him for accurate information. We voted him into office all those years. We trusted him, IDWR, and the State of Idaho to protect our water rights, and to oversee the accurate distribution of our rights. While he was misleading IDWR and us, perhaps he was also misleading the Adjudication Court. We should have been more informed, more vigilant, and LESS trusting.

2. On January 16, 2005, an article, in a Supplement to the Boise Statesman, titled **"State water chief Karl Dreher is the man...with his hand on the headgates."** An excerpt from that article says, "Dreher has already faced several challenges to his authority.>A watermaster in the Lost River near Arco refused to shut off water users he knew would suffer and was backed by a local deputy.> Dreher dismissed the watermaster and appointed a new one to carry out the order in 2003." Mr. Duke is still in office.

3. **"TRIP REPORT"** dated October 25, 2004 regarding Antelope Creek diversions. The entire report shows violations, a good number caused by Mr. Duke.

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4. According to the "Accounting for Water District 34" for 2004 on the internet, there were over diversions above the reservoir. IDWR questioned these over diversions. The "Accounting for Water District 34" for 2005 show over diversions exceeding those of 2004. Why didn't IDWR question these over diversions during the irrigation season? If Mr. Duke's deputy watermaster was recording inaccurate information, why didn't Mr. Duke realize the error? Isn't it his "duty" to monitor his personnel?

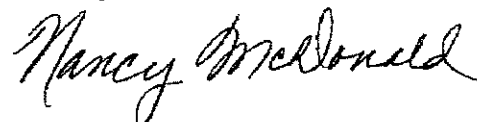
5. On the 2004 Accounting, the Exchange Wells on the Eastside were reported. On the 2005 Accounting, no Exchange Wells were reported. When questioned about this matter, Mr. Duke responded that he didn't know why Cindy didn't report them.

There are several other Exchange Wells that I believe should be reported. I wrote you a letter on April 2, 2006 concerning these wells. According to the "Watermaster Report" on the internet, there was no power consumption for two of these wells. Was water diverted out the Darlington and then not replaced with ground water? At the meeting in Boise on May 8, 2006, Mr. Duke apparently didn't know where one of the Exchange Wells was or if it even reached the River.

SUMMARY: Mr Duke was employed as a Deputy Watermaster, and a ditch rider for BLRID, while Doug Rosenkrance was the Watermaster. He should have had knowledge of water distribution from this previous job. IDWR gave him instructions and help in 2003 when he took office. When ever a questionable incident occurs, he blames the mistake on his deputy watermasters, his office help, or his misunderstanding of the situation. Eventually, some one must take the blame. If an employee is unable or unwilling to comply with the regulations, he should be replaced. As long as IDWR accepts his excuses, the confidence in IDWR will continue to diminish. Has anyone verified compliance with IDWR's orders above the Reservoir and Antelope? All these issues are annoying to IDWR, but they are our livelihood. Trust can only be rebuilt with full, honest, verifiable delivery and accounting, and the knowledge that someone will ultimately be held accountable. IDWR seemed to advocate additional personnel, but what good would more inept bodies do.

This Spring, IDWR filed charges against Clayton B. Fullmer, a former deputy watermaster from Eastern Idaho, for illegally selling water. Why shouldn't allowing over diversions and depriving individuals their legal water rights be just as important? There may not have been any monetary gain for the watermasters in District 34, but both practices are just as detrimental to the patrons who are not receiving their water.

Sincerely,



Enclosures:

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IDWR Actions Related to Water District 34 2003 Irrigation Season

1. Conducted Watermaster Training on April 17, 2003 for the Water District 34 Watermaster and Deputy Watermasters at the request of the Water District 34 Advisory Board.
2. Completed inventory of 60 diversions from Warm Springs Creek, Parsons Creek, Pole Stackyard Creek, and the Big Lost River upstream of Mackay Reservoir.
3. Provided the Watermaster with a list of water rights pertinent to each diversion upstream of Mackay Reservoir, for use in regulating diversion flow rates by priority.
4. Developed an internet based Watermaster data entry program which enables Water District 34 to submit diversion data to IDWR on a weekly basis. This is the first year the Water District has reported daily diversion data to IDWR for the 60 diversions upstream of Mackay Reservoir. The data submitted has been analyzed to identify problems that may have occurred this season. This information will be used by IDWR to improve the training and assistance provided to Water District staff next year.
5. Continued inspection of diversions upstream of Mackay Reservoir for compliance with headgate and measuring device requirements.
6. Issued 7 notice of violation/cease and desist orders, 14 pending notices of violation, and 6 warning letters. These enforcement letters involved 33 diversions above Mackay Reservoir and 1 diversion below Mackay Reservoir that were not in compliance with requirements to install and maintain adequate lockable headgates and/or measuring devices. These enforcement letters also included 2 unauthorized ponds and 2 unauthorized points of diversion. IDWR will be conducting additional inspections next spring and summer to follow up on these enforcement issues.
7. Provided training for Water District staff on measurement of irrigation wells. IDWR is also assisting the Water District by reviewing the well measurement data collected during the 2003 irrigation season.
8. Reviewed LANDSAT photos for potential illegal places of use.

While IDWR can continue to assist the Water District by enforcing headgate and measuring device requirements, and providing training and technical assistance, a major obstacle to increasing regulation and accountability is inadequate funding of the Water District. In order for Water District 34 to increase the level of regulation, additional staff and equipment are needed.

**WATER DISTRICT 34
2003 Enforcement Letters**

| RECIPIENT | DATE | DIVERSION | TYPE OF NOTICE |
|---|-----------|---------------------|-----------------------------|
| Bret Zollinger Jolene Zollinger | 7/10/2003 | Zollinger 1 | Notice of Violation |
| | | Zollinger 2 | Notice of Violation |
| | | Zollinger 3 | Notice of Violation |
| | | Zollinger/No Tellum | Notice of Violation |
| No Tellum Creek Ranch c/o Mark Scheu | 7/10/2003 | Zollinger/No Tellum | Notice of Violation |
| | | No Tellum 2 | Notice of Violation |
| | | No Tellum 1 | Pending Notice of Violation |
| | | No Tellum 3 | Pending Notice of Violation |
| Diane Hatmaker Sally Rac Johnson Joan Johnson Walter H. Johnson | 7/10/2003 | Bradshaw 2 | Notice of Violation |
| | | Anderson | Pending Notice of Violation |
| | | Johnson/Hatmaker | Pending Notice of Violation |
| | | Bradshaw | Pending Notice of Violation |
| Terrence Donahue Carol J. Donahue | 7/10/2003 | Donahue 2 | Notice of Violation |
| | | Donahue 1 | Pending Notice of Violation |
| | | Donahue 3 | Pending Notice of Violation |
| Broken River Ranch, LP c/o Morgan Haroldsen c/o Roy E. Crawford | 7/10/2003 | Broken River Ditch | Notice of Violation |
| | | Broken River Pumps | Pending Notice of Violation |
| Richard A. Smith | 7/11/2003 | Smith Pumps | Pending Notice of Violation |
| Alexander Cherian | 7/11/2003 | Cherian | Pending Notice of Violation |
| Clinton Bitton Esther Bitton BLM | 7/10/2003 | Kent | Pending Notice of Violation |
| | | Bradshaw 1 | Pending Notice of Violation |
| | | Bitton | Pending Notice of Violation |
| See COS | 7/10/2003 | Neilsen | Pending Notice of Violation |
| Herb Whitworth, Jr. | 7/10/2003 | Longhurst | Pending Notice of Violation |
| Priscilla B. Woods Ward W. Woods Elizabeth W. Gates Trustee Mark T. Gates Trustee Jim Gregory | 7/11/2003 | Gates/Woods 1 | Pending Notice of Violation |
| | | Gates/Woods 2 | Pending Notice of Violation |
| | | Gates/Woods 3 | Pending Notice of Violation |
| | | Gates/Woods/6X | Pending Notice of Violation |
| Walter Stoecklein | 7/11/2003 | Stoecklein 1 | Pending Notice of Violation |
| | | Stoecklein 2 | Pending Notice of Violation |
| Idaho Cowboy, Inc. c/o David Stoecklein | 7/10/2003 | Idaho Cowboy well | Pending Notice of Violation |
| See COS | 7/10/2003 | Chilly | Warning Letter |
| Robert Unger No Tellum Creek Ranch c/o Mark Scheu | 7/11/2003 | Pence | Warning Letter |
| Broken River Ranch, LP c/o Morgan Haroldsen c/o Roy E. Crawford | 7/16/2003 | Pond | Notice of Violation |

| RECIPIENT | DATE | DIVERSION | NOTICE |
|--|-----------|----------------|-----------------------------|
| Clinton Bitton Esther Bitton BLM | 8/20/2003 | Bitton | Notice of Violation |
| Clinton Bitton Esther Bitton Dr. Lynn Reno Dickey Livestock, Inc. | 8/20/2003 | Ingram | Pending Notice of Violation |
| Rodger Sorensen Mary Sorensen | 8/20/2003 | Sorensen | Pending Notice of Violation |
| Dennie Donahue | 9/9/2003 | Donahue 1 | Warning Letter |
| Mountain Springs Ranch c/o Shane Rosenkrance | 9/9/2003 | MSR 2 MSR 4 | Warning Letter |
| Big Lost River Irrigation District | 9/10/2003 | Beck | Warning Letter |
| Lita West | 9/25/2003 | Ponds | Warning Letter |

October 3, 2003

IDWR Conference Room A&B

Following is a compilation of notes taken at the Big Lost Protest meeting. These are NOT official minutes, and were not taken to become part of any official record. The purpose of the note taking was to list the items being requested of the Department by the members of the Coalition for Water. The notes begin about ten minutes into the meeting, at which time I was requested to attend. Speakers that did not give their names, or were identified before I arrived, are listed as "unidentified".

Unidentified – Talked about stock water rights connected to the surface water above and below the reservoir. He suggested a futile call be made on the stock water rights. He went on to say that they are here today to petition the Department to alleviate the situation for the concerned citizens. They have formed a coalition, and the situation in their area is critical.

Norm Sowards – Purchased the old King Ranch in 1958. He talked about the 70-year plot showing the measurements of the flow into the reservoir, and that it matches the peaks, until the last four years. Now the measurements show the flow to be one-half of the peak measurements. His house was built in 1910, and the well at that time was at 20 feet. In 1960, the well was dug to a depth of 40 feet. In 1985, the well went dry and he drilled a new well at a depth of 100 feet. That well went dry this summer. He drilled another well to a depth of 150 feet. He urged the Department to look at the plot of the snow water equivalents for the last 50 years. There have been streaks of wet and dry years, but he doesn't feel that the weather affects it. He thinks the lack of water is due to over allocation. Sowards stated that the water is not wasted when it is dumped into the river – it recharges the aquifer. The dry periods are of concern and he urged the protection of the aquifer during this time. Sowards went on to say that water equals reservoir equals snow water equivalent plot. The plot does fine until the last several years.

Jim Beverly – Asked how far do they have to keep digging their wells before their concerns are addressed? They are spending hundreds of thousands of dollars to dig domestic wells. The average well is over a depth of 100 feet.

Ron Mort – Expressed concerns that the stock water above the reservoir is not being measured. Asked when a futile call will be made on the stock water for recharge? He said he was just asking for a fair and equitable distribution of water. He stated that IDWR needed to protect the watermaster 10 years ago. Domestic water has preference over other uses.

Howard Wood – Described well digging on his property, and how they have hit air. There is nothing left to drill for on his property.

Unidentified (dressed as a frontier woman with an Australian accent) – She had highlighted portions of the Constitution regarding imminent domain over crops. She asked the Director to read what she had highlighted, and he complied. She said that according to the Constitution, IDWR should compensate Howard Wood for his drilling.

The Director then went on to read the entire section containing the highlighted text, and stated that the highlighted portion could not be taken out of context – it had to be considered in light of what the rest of the section stated. He explained that Wood has an imminent domain over junior water right holders, but must compensate them according to the Constitution.

Kit Christiansen – Spoke about his frustrations of applying for a new water permit, having it approved, and then being told he must now go through the adjudication process. He felt it was too much trouble for a domestic well. He goes before the judge soon.

Howard Wood – Water was only five feet down when he first bought his place, and the springs were full. Not having a minimum flow affects not only the domestic wells, but the wildlife as well.

Norm Sowards – Mentioned the Crossway Report – ground water and surface water are the same, and should be administered accordingly. He expressed concerns over notice being placed in newspapers advertising changes that will affect people up and down the river and along the drainage. He suggested that notices be placed in the Challis Messenger and the Arco Advertiser, both are weekly newspapers that service their area. He talked about replacements wells being redrilled as wells for irrigation, and that they are not necessarily new first time wells that are being drilled, and notice is not given.

Director Dreher – talked about the ground water management areas and their mitigation plans. He used Thousand Springs and American Falls as examples of ground water management areas that have mitigation plans in place. (Note: IDWR has a copy of the North Snake Ground Water District and Magic Valley Ground Water District mitigation plan on our website at www.idwr.state.id.us)

Norm Sowards – Stated that the long-term affect was being ignored.

Director Dreher – In 1994, Conjunctive Management Rules were adopted. District 34 has rules as well. The concept of a futile call is recognized – curtailing a junior priority right becomes futile when the water will not reach the senior priority right. The prior appropriation doctrine is harsh – you cannot change a point of diversion for wells and maintain your senior status. If you do make a change in the point of diversion, your right then becomes junior in priority.

Director Dreher – Recharging the Big Lost doesn't work well as the water flows through too quickly to the Eastern Snake Plain Aquifer. The water will not stay put long enough to be of benefit to the Big Lost water users. The on-going drought and the heat waves were major factors this year. We had unprecedented heat for long periods of time.

Director Dreher – Gave a Powerpoint presentation. Copies of the three slides are attached. The first dealt with the Big Lost River at Howell Ranch showing measurements of the annual runoff from 1949 to 2003. The problem is being driven by the drought. He made the comparison that what is happening to the Big Lost is similar to the phenomenon happening in the Eastern Snake Plain Aquifer. Basin 34 is an area of conflict and concern.

He directed their attention to the handout entitled "IDWR Actions Related to Water District 34 2003 Irrigation Season". The long-term watermaster that has now retired, was misleading IDWR as evidenced in the recent steps taken in number 6 of that handout. (See attachment)

Ron Mort – Commented that the new watermaster lives in the valley. He thinks that the watermaster has been intimidated by the larger ranches.

Unidentified – Thinks that the watermaster elections are a sham. A five-year average of water use is equal to one vote. The larger ranches have more votes.

Ron Mort – Stated that an 1879 priority right should be satisfied first like it was in the old days.

Director Dreher – Explained the Notice of Violation (NOV) process, what it can and cannot do, and stated that steps are being taken. He noted that IDWR issued 7 NOV's/cease and desist orders, 14 pending NOV's and 6 warning letters. The enforcement letters involved 33 diversions above Mackay Reservoir and 1 diversion below the reservoir that did not have lockable headgates or measuring devices. There were also 2 unauthorized ponds and 2 unauthorized points of diversion. IDWR will follow-up next year to see if these violations have been corrected.

Many members asked if the Director could be their watermaster. Director Dreher commented that one could be appointed from the Department that would work directly for him, and would take their instructions only from him. IDWR has a couple of areas wherein a Department employee is also the watermaster for a water district. The coalition was receptive to this idea, and the Director told them they would have to pay the salary of the watermaster. It was decided that they would contact the Director at a later date for a possible appointment of a Department watermaster for the next season.

Meeting adjourned at 5:05 p.m.

State water chief Karl Dreher is the man ...

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Karl Dreher's exercise of authori-
ty could cost the state's
economy \$1 billion.

The state's top enforcer of water law
stands ready, if required, to order hun-
dreds, perhaps thousands, of Idaho
farmers and business people to shut off
the pumps that irrigate their fields, wa-
ter their herds of dairy cows or allow
them to manufacture sugar, cheese,
fries and farm implements.

"The law does not allow me to con-
sider the economic implications,"
Dreher said. "I am prepared to do my
duty."

Dreher is the director of the Idaho
Department of Water Resources, a
200-employee agency with a \$21 mil-
lion budget that administers and en-
forces Idaho water laws. The engineer,
who serves at the pleasure of Gov. Dirk
Kemphorne, has the power and re-
sponsibility to say who gets water and
who doesn't.

Through his and his agency's au-
thority, day-to-day decisions on which
ditch gets water and which doesn't are
made by watermasters who oversee
water districts across the state. These
daily decisions are easy in wet times
but tougher in drought.

A hundred years of experience has

Myth:

Saving water at home will
help solve our water crisis.

Reality:

Limiting domestic water use would have little effect on
Idaho's water supply because 93 percent of the water
Idaho uses goes to irrigate farmland.

with his hand on the headgates

made most farmers recognize when their own water rights are trumped by someone with a senior prior water right. However until now, groundwater users were never shut off.

Only now that the state recognizes the connection between groundwater and surface water does Dreher face the unenviable job of telling entire communities he may shut down the lifeblood of their economies. Dreher hopes he and other state officials can negotiate an agreement that prevents him from having to carry out his duty.

Idaho water law, based on the doctrine of first come, first served, is "orderly but harsh," Dreher said.

Dreher, 54, has been Idaho Department of Water Resources director for nearly a decade. It has been a time of drought and turmoil in the state's water administration.

He came from Colorado where he built a reputation as a conciliator who could get things done.

As engineering head of the Northern Colorado Water Conservancy District, which allocates water to 500,000 people living in a 2,350-square-mile area, he guided the successful planning and building of a 110-mile pipeline to bring water to residents.

Since he arrived in Idaho he has rein-

vigorated the state's legal review of water rights, helped pass the state conjunctive management law that addresses groundwater-surface water disputes and has helped develop the current proposals aimed at resolving the huge dispute over the Eastern Snake Plain Aquifer.

"I think he's waded in with considerable courage and a willingness to take risks to move water management ahead in this state," said former Sen. Laird Noh, R-Kimberly, who co-chaired the interim committee working on water issues.

Dreher has already faced several challenges to his authority.

A watermaster in the Lost River near Arco refused to shut off water users he knew would suffer and was backed by a local deputy.

Dreher dismissed the watermaster and appointed a new one to carry out the order in 2003.

Dreher said he will enlist county sheriffs in his effort to shut down illegal pumping.

If the sheriffs don't cooperate then he'll call on the State Police.

Steve Howser, general manager of the Aberdeen Springfield Canal Company in Aberdeen, has had bitter disputes with Dreher over interpretation of the company's water rights and water law. But he re-

spects the way he exercises his authority and works to resolve issues.

"When you have a dispute with him he goes and does his homework," Howser said.

"The next time he speaks with you he has answers for your questions."

Dreher has his critics.

Lee Halper, a Jerome farmer who is critical of big dairies in the Magic Valley, said Dreher has favored the dairies and other big industries at the expense of public involvement.

He said Dreher has approved water transfers and made other rulings "that were obviously politically determined and approved by Dreher with reasons that don't stand up in court."

But Howser said most water managers like him recognize how tough Dreher's job is.

At a recent meeting of the Committee of Nine, a quasi-governmental panel of canal companies and irrigation districts from Henry's Lake to King Hill, Dreher was able to get divergent interests to consider a new proposal for leasing water.

"Nothing had changed from the previous time we heard this proposal except that Karl was talking," Howser said. "I was just amazed. When he gets up and starts talking, people listen."

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Myth: Wilderness protection locks up Idaho water.



Reality:



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w-enforcement officers
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POST REGISTER / FRIDAY, SEPTEMBER 11, 2003

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CONTACT CITY EDITOR KORTNY ROLSTON AT 542-6784 OR VIA E-MAIL AT KROLSTON@POSTREGISTER.COM.



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Ex-watermaster charged

Man faces as much as six years for illegally selling water

POST REGISTER

A former deputy watermaster from eastern Idaho has been hauled off to jail for illegally selling water.

Clayton B. Fullmer, 32, was ordered Tuesday to spend two to six years in prison for grand theft. However, 7th District Judge Brent J. Moss suspended the prison sentence and ordered the Tetonla resident to spend 10 days in

the county jail.

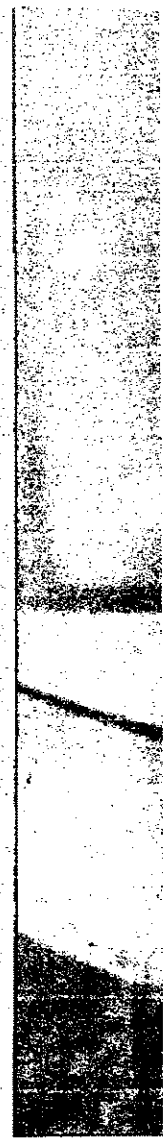
Moss ordered him to pay a \$750 fine and \$1,470 in restitution to the Idaho Department of Water Resources, serve three years' probation and perform 200 hours of community service.

Fullmer admitted in November that he had sold water belonging to the state to two ranchers. He made the sale in 2003 after telling the two, who held water rights on the Cache Canal near

Driggs, that they had run out of water, according to a news release from the Idaho Attorney General's Office. The water owner said he could sell them some water owned by a private party and they jumped at the chance. The release said.

The water resources department learned of the sale in 2003 and notified the Teton County prosecutor, who asked the attorney general to prosecute the matter.

DUCK CROSSING



Three dead
in accident
Wednesday

POST REGISTER

Three people died in a car accident Wednesday night in Jefferson County. Carol Peck, 53, and Darwin Peckman, 51, both passengers in Peck's husband's 1993 GMC Suburban, were struck and died at the scene of the crash — the intersection of 800 North and 2500 East.

Marion resident Vicki Marie Barrett, a 40-year-old passenger in the other car, a 1998 white Toyota, died at Jackson Memorial Medical Center, where she was taken by helicopter. A Suburban was parked east on 500 South at about 7 p.m. when it collided with the Toyota, which was eastbound on 800 East. Idaho State Police investigators are